

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ALMA ROSA INFANTE,

Plaintiff,

V.

**THE CITY OF HASTINGS, NEBRASKA;
ADAMS COUNTY, NEBRASKA; THE
STATE OF NEBRASKA; and JOHN AND
JANE DOES 1-10,**

Defendants.

CASE NO. 4:15CV3047

MEMORANDUM AND ORDER

This matter is before the Court on the Plaintiff's Motion for Leave to File Second Amended Complaint (Filing No. 37). Plaintiff suggests that the Motion should be granted pursuant to Fed. R. Civ. P. 15(a)(2) which provides that a "court should freely give leave [to amend] when justice so requires."

Plaintiff Alma Rose Infante (“Infante”) initiated this action in the District Court for Adams County, Nebraska, on April 2, 2015, presenting four purported causes of action: (1) negligence, (2) deprivation of property for public use without just compensation in violation of the Nebraska Constitution, (3) deprivation of property without just compensation in violation of Neb. Rev. Stat. § 76-705; and (4) deprivation of her rights under the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution under color of state law, in violation of 42 U.S.C. § 1983.

On May 1, 2015, the Defendant City of Hastings removed the action to this Court, invoking the Court's original jurisdiction over Infante's § 1983 claim and asking the Court to take supplemental jurisdiction over the remaining claims. On June 14, 2015, Infante filed an Amended Complaint, similar to the original Complaint in all material respects.

Defendants Adams County and City of Hastings moved to dismiss the Amended Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can

be granted. The Defendant State of Nebraska moved to dismiss the Amended Complaint on the same grounds, as well as Fed. R. Civ. P. 12(b)(1), noting that this Court lacked subject matter jurisdiction over Infante's civil rights claims against the State of Nebraska, because the State had not waived its sovereign immunity with respect to such claims.

On September 3, 2015, this Court granted the Defendants' motions to dismiss; dismissed Infante's civil rights claims against the State of Nebraska, with prejudice; dismissed her other claims, without prejudice; and entered Judgment. See Memorandum and Order at Filing No. 35, and Judgment at Filing No. 36. Infante did not appeal, nor did she move to alter or amend the Judgment pursuant to Fed. R. Civ. P. 59(e), and the Judgment is final.¹

Infante's Motion for Leave to File Second Amended Complaint is untimely and without merit, and it will be denied.

IT IS ORDERED:

1. Plaintiff's Motion for Leave to File Second Amended Complaint (Filing No. 37) is denied; and
2. Defendant State of Nebraska's Objection to Plaintiff's Motion for Leave to File an Amended Complaint (Filing No. 39) is denied as moot.

DATED this 20th day of October, 2015.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

¹ While Infante has not moved for relief from the Judgment pursuant to Fed. R. Civ. P. 60, the Court notes that nothing in her Motion for Leave to File Second Amended Complaint suggests any grounds for relief from the Judgment under Rule 60.